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Attorneys for Defendant
NETWORK SOLUTIONS, LLC

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

DOE, Individually And On Behalf Of All
Others Similarly Situated,

Plaintiff,

vs.

NETWORK SOLUTIONS, LLC,

Defendant.

No. C 07-5115 JSW

DEFENDANT NETWORK
SOLUTIONS, LLC'S OPPOSITION TO
MOTION TO STRIKE

Judge: Hon. Jeffrey S. White

Date: January 25, 2008

Time: 9:00 a.m.

CrtRm: 2

Defendant Network Solutions, LLC ("Network Solutions" or "Defendant") hereby
submits its Opposition to Plaintiff's Motion to Strike. For the Court's convenience,
Network Solutions submits this opposition in accordance with the Court's Order Setting

1 Briefing Schedule on Pending Motions (Dkt. 21), though Plaintiff's Motion is not subject to
2 the Order.

3 **I. INTRODUCTION**

4 Federal Rule of Civil Procedure 12(g) ("Rule 12(g)"), Local Rule 7-2, and this
5 Court's standing order do not require a party to consolidate all of its Rule 12 motions into
6 one fifteen-page motion. A party may bring more than one motion under Federal Rule of
7 Civil Procedure 12 ("Rule 12"), as long as the motions are filed simultaneously and not
8 successively in a piecemeal fashion. On November 28, 2007, Defendant Network
9 Solutions, LLC ("Network Solutions") filed three Motions to Dismiss and one Motion to
10 Strike. Plaintiff misinterprets Rule 12(g) and moves to strike Network Solutions' motions
11 by claiming that Network Solutions may not bring "successive Rule 12 motions" and must
12 consolidate all into one, fifteen-page motion. However, Network Solutions properly filed
13 its Rule 12 motions simultaneously, pursuant to Rule 12(g), Local Rule 7-2, and this
14 Court's standing order.

15 **II. STATEMENT OF FACTS**

16 On November 28, 2007, Network Solutions filed four motions: (1) Motion to
17 Dismiss for Failure to State a Claim Pursuant to Federal Rule of Civil Procedure 12(b)(6);
18 (2) Motion to Dismiss Pursuant to Federal Rule of Civil Procedure 12(b)(3), or in the
19 Alternative to Transfer Pursuant to 28 U.S.C. §1406(a), for Improper Venue; (3) Motion to
20 Strike Pursuant to Federal Rule of Civil Procedure 12(f) and (4) Motion to Dismiss
21 Pursuant to Federal Rule of Civil Procedure 12(b)(1) for lack of subject matter jurisdiction.
22 Plaintiff seeks to strike Motions (1)-(3). Network Solutions filed all of its motions at the
23 same time. Each of the filed motions was less than fifteen pages in length. Each Motion
24 deals with a distinct legal issue and subsection of Federal Rule of Civil Procedure 12.

1 **III. ARGUMENT**

2 A. Defendant's Motions Are Appropriate Under the Federal Rules of Civil
 3 Procedure, Local Rules and this Court's Standing Orders.

4 Rule 12(g), Local Rule 7-2, and this Court's standing order do not prohibit Network
 5 Solutions from bringing separate Rule 12 motions at the same time. Rule 12(g) provides
 6 that

7 [a] party who makes a motion under this rule may join with
 8 it any other motions herein provided for and then available
 9 to him. If a party makes a motion under this rule but omits
 10 therefrom any defense or objection then available to him
 11 which this rule permits to be raised by motion, he shall not
 thereafter make a motion based on the defense or objection
 so omitted, except a motion as provided in subdivision
 (h)(2) hereof on any of the grounds there stated.

12 Fed. R. Civ. Proc. 12(g) (2007).

13 Rule 12(g) does not state that a party may only bring one Rule 12 motion. Nor does
 14 Rule 12(g) prohibit a party from filing multiple Rule 12 motions simultaneously. Rather,
 15 Rule 12(g) contemplates a situation where a moving party files numerous *successive*
 16 motions in order to cause delay and encourage dilatory tactics. Aetna Life Ins. Co. v. Alla
 17 Medical Serv., Inc., 855 F.2d 1470 (9th Cir. 1988). The purpose of the rule is to prevent
 18 piecemeal consideration of pretrial motions and encourage a party to present all of its
 19 defenses and objections at the same time. 61A Am. Jur. 2d Pleading § 453 (2007). The
 20 cases Plaintiff cites to in his Motion to Strike support this very reasoning and each of those
 21 cases deals with Rule 12 motions that were filed successively rather than simultaneously.
 22 See Chilicky v. Schweiker, 796 F.2d 1131, 1136 (1986), rev'd on other grounds, 487 U.S.
 23 412 (9th Cir. 1988) ("Fed. R. Civ. P. 12, and specifically subdivisions (g) and (h), promote
 24 the early and simultaneous presentation and determination of preliminary defenses.");
 25 CGHH, LLC v. Cesta Punta Deportes S.A. de C.V., 2006 U.S. Dist. LEXIS 15015, *9
 26 (N.D. Ga. 2006) (To allow a moving party to assert arguments in a subsequent motion to
 27 dismiss that should have been included in its first motion to dismiss "would contravene the
 28 purpose of *Rule 12(g)*."); English v. Dyke, 23 F.3d 1086, 1090 (6th Cir. 1994) (The moving

1 party “cannot delay the filing of a responsive pleading by interposing [Rule 12] defenses
 2 and objections in piecemeal fashion but must present them simultaneously.”). Network
 3 Solutions did not violate Rule 12(g) because it filed the motions simultaneously, to be heard
 4 on the same day without delay.

5 Plaintiff also misconstrues waiver within the context of Rule 12(g). Under Rule
 6 12(g), certain defenses listed in Federal Rule of Civil Procedure 12(h) (“Rule 12(h)”) ¹ that
 7 are not raised in a Rule 12 motion are deemed waived only if the moving party fails to bring
 8 that defense in its first motion and later attempts to bring another motion in order to include
 9 the missing defense. Chilicky, 796 F.2d at 1136; CGHH, LLC, 2006 U.S. Dist. LEXIS at
 10 *9; English, 23 F.3d at 1090-91. Network Solutions filed simultaneous Rule 12 motions –
 11 not *successive* motions – and therefore did not waive its Rule 12(h) defenses.

12 Network Solutions also complied with this Court’s standing order that each motion
 13 be fifteen pages or less. Network Solutions did not seek to burden Plaintiff by filing
 14 motions that are authorized by the Federal Rules of Civil Procedure and justified by the
 15 issues raised by Plaintiff’s Complaint. To the contrary, Network Solutions informed
 16 Plaintiff’s counsel in advance of filing the pending motions, and requested that the parties
 17 stipulate to an extended briefing schedule. Plaintiff’s counsel, however, refused, and
 18 rejected this effort to ease the purported burden of opposing Network Solutions’ Rule 12
 19 motions.

25 ¹ Federal Rule of Civil Procedure 12(h) provides that “[a] defense of lack of jurisdiction
 26 over the person, improper venue, insufficiency of process, or insufficiency of service of
 27 process is waived (A) if omitted from a motion in the circumstances described in
 28 subdivision (g), or (B) if it is neither made by motion under this rule nor included in a
 responsive pleading or an amendment thereof permitted by Rule 15(a) to be made as a
 matter of course.” Fed. R. Civ. Proc. 12(h) (2007).

1 **IV. CONCLUSION**

2 Defendant Network Solutions did not violate Rule 12(g), Local Rule 7-2, or this
3 Court's standing order and therefore Plaintiff's Motion to Strike should be denied.

4 Dated: December 21, 2007

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8 By: /s/
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